

not frequently be in accord with sound public policy, as well as to the best interests of the minor children, to reduce the burden of the one liable for the support when it becomes apparent that to deny such reduction would be to work undue hardship on the father? "There is no virtue in killing the goose which laid the golden eggs."⁴

C. M. H.

DESCENT AND DISTRIBUTION

OHIO GENERAL CODE SECTION 10512-19—RIGHT OF AN ADOPTED CHILD TO INHERIT THROUGH ITS ADOPTIVE PARENT

Lena Post died intestate, survived by two brothers and an adopted son of her deceased sister. Upon a petition by her administrator to determine the heirs of the estate, the Probate Court excluded the adopted child as an heir. On appeal the Court of Appeals of Cuyahoga county reversed the Probate Court and held that the statute of descent and distribution, Ohio General Code, Section 10503-4 (6), when construed in connection with the adoption statute, Ohio General Code, Section 10512-19, permits an adopted child to inherit not only *from* but also *through* its adoptive parent. *White, Adm., v. Meyer*, 66 Ohio App. 549, 33 Ohio L. Abs. 151 (1940).

The principal case is the most authoritative direct holding reported since the adoption statute was amended in 1932.¹ In arriving at its decision the court disposes of a line of Supreme Court cases to the contrary,² by pointing out that they were all decided before the 1932 amendment was added to the adoption statute.³ There are not many reported cases interpreting the effect of this amendment. In reading them one denotes a tendency on the part of the courts to adhere to the rule established by the outmoded Supreme Court de-

⁴Lloyd, J., dissenting, in *Campbell v. Campbell*, 46 Ohio App. 197. See also dissenting opinion of Zimmerman, J., in 138 Ohio St. 187, 200.

¹See Note (1940) 7 OHIO STATE L. J. 441, where the previous Ohio cases are discussed.

²*Albright v. Albright*, 116 Ohio St. 668, 157 N. E. 760 (1927); *Phillips v. McConica*, 39 Ohio St. 1, 51 N. E. 445 (1898); *Quigley v. Mitchell*, 41 Ohio St. 375 (1884); *Upson v. Noble*, 35 Ohio St. 655 (1880).

³General Code, Section 10512-19, Effective Jan. 1, 1932, replaced former Section 8030, and added the following words: "but shall be capable of inheriting property expressly limited by will or by operation of law to the child or children, heir or heirs at law, or next of kin, of the adopting parent or parents, or to a class including any of the foregoing."

cisions, that an adopted child can inherit from but not through its adoptive parent.⁴ In fact a dissenting opinion in the principal case urges preservation of the old rule unless and until some statute expressly says that an adopted child can inherit through its adoptive parent.

It is difficult to predict the effect which the holding in the principal case will have in settling this controversial question of probate law. Writers as well as courts have differed as to the correct construction of the inheritance provision of the adoption statute.⁵ This decision is unique in the sense that there is little case support for it in Ohio.⁶ The lack of uniformity in interpreting this statute cannot be traced to faulty draftsmanship. Rather it is the result of a willingness on the part of courts to follow precedent without regard to changes in a social policy as evidenced by legislative enactments. The purpose of General Code, Section 10512-19 was to accord to adopted children the same treatment as that given to natural children, by abolishing the old rule that an adopted child cannot inherit through its adoptive parent. The language there used seems adequate to accomplish that purpose. In construing this language all possible doubts as to the legislative intent could easily be resolved by looking to the comments and recommendations of the special Committee of

⁴ In a direct holding that an adopted child is not the *issue* of the ancestor of her adoptive parent within the meaning of the term "issue" as used in the testator's will, the Court of Appeals in *Reinhard, v. Reinhard*, 23 Ohio L. Abs. 306 (1936), relied upon the Supreme Court cases cited note 3 *supra*. This case may be distinguished due to the restricted meaning sometimes attached to the word "issue", but the language of Section 10512-19, seems broad enough to bring adopted children within a limitation to "issue". The court in *Rogers v. Miller*, 43 Ohio App. 198, 182 N. E. 654 (1932), avoided construing General Code, Section 10512-19, but referred to the Supreme Court decisions in construing former Section 8030, General Code, adversely to the adopted children by finding that they could not take as *issue* or *children* of the settlor's deceased son. In two analogous cases holding that a designated heir can inherit from but not through the declarant, the courts referred to General Code, Section 10512-19, and construed it as not having changed the former rule laid down by the Supreme Court. *Rogers v. Cromer*, 24 Ohio L. Abs. 508 (1937), Noted (1937) 4 OHIO ST. L. J. 97; *Southern Ohio Savings Bank & Trust Co. v. Boyer*, 66 Ohio App. 136, 31 N. E. (2d) 161, 32 Ohio L. Abs. 626 (1940), Noted (1940) 7 OHIO ST. L. J. 441, Noted (1941) 15 CINCINNATI L. REV. 348.

⁵ In a Note (1937) 4 OHIO ST. L. J. 97, the writer seems to approve of the rule that an adopted child can inherit from but not through the adopting parent. *Contra* and in support of the view taken by the court in the principal case, Note (1940) 7 OHIO STATE L. J. 441; DIEBEL, OHIO PROBATE LAW (2d Ed. 1932) 1136 Sec. 1180; LAMNECK, OHIO PROBATE DIGEST AND PRACTICE MANUAL (3d Ed. 1937) 515 Sec. 794 (b).

⁶ *Shearer Adm. v. Gastman*, 15 Ohio L. Abs. 103, 31 Ohio N. P. (N. S.) 219 (1933), is a Probate Court decision in line with the principal case. The cases of *Smith v. Hunter*, 86 Ohio St. 106, 99 N. E. 91 (1912), and *Hummel v. Davis*, 22 Ohio L. Abs. 49 (1936), though not squarely in point are nevertheless more in sympathy with the view of the principal case than with the contrary position. *In re Estate of Griffin*, 33 Ohio L. Abs. 270, 19 Ohio Op. 377 (1935), contains a *dictum* that the present adoption statute enlarges an adopted child's right of inheritance.

the Bar Association which drafted Section 10512-19.⁷ This Committee believed that the former statute, General Code, Section 8030, was sufficiently broad to permit inheritance through the adoptive parent, but in the face of contrary interpretation by the courts, the Committee recommended that the additional language of Section 10512-19 be inserted.⁸ The court in the principal case takes cognizance of this statutory development and carries out its purpose by allowing the adopted child to inherit through its adoptive parent.

J. P. M.

EQUITY

INJUNCTION — AGAINST INEQUITABLE LITIGATION IN FOREIGN JURISDICTION—FEDERAL EMPLOYERS' LIABILITY ACT

Kepner, employed by the Baltimore and Ohio Railroad, was injured in the course of his employment in Ohio, the state of his residence. Choosing from among the three federal forums available under the venue section of the Federal Employers' Liability Act,¹ he brought an action for damages in a United States district court for New York, where the railroad was doing business. After institution of the suit, the defendant road brought this action in an Ohio court, asking that Kepner be enjoined from further prosecuting the foreign suit, alleging that it was brought for purposes of harassment, that it would cause the defendant great inconvenience and expense to defend the action 700 miles from the place of injury, and that a federal district court in Ohio could equitably hear and decide the case on its merits. Kepner's demurrer was sustained and the injunction refused. On successive appeals, culminating in the Supreme Court of the United States, *held*, affirmed, on the ground that a state court may not enjoin the exercise of the right given by

¹⁰ Snyder v. Swope, Director of Safety, 23 Ohio L. R. 361, 366 (1922).

¹⁴ 5 U. S. C. 56, to the effect that an action under the F.E.L.A. may be brought in the district of the residence of the defendant, in the district in which the cause of action arose, or in the district in which the defendant is doing business at the time of the bringing of the action.